

LOS ANGELES BAR BULLETIN



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LOS ANGELES BAR BULLETIN

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A FOOTNOTE TO THE PEACE PLAN

AT the end of the first world war when Justice Holmes was asked his opinion as to the possibility of permanent peace, he said in effect that he was afraid we would have the same kind of world in the future as we had had in the past so long as the same kind of people lived in it. The first impression one gains from such a statement is that it is one of complete pessimism. On consideration it will be seen that it is merely stark realism. It becomes pessimistic only if it implies that the people of this world will not change for the better. Justice Holmes did not say whether he thought the peoples of the earth would change, but his statement is a solemn warning that they must change for the better if we are to have anything but a truce from war, anything but a breathing spell before the nations again gird themselves for the final destruction of this civilization. Justice Holmes was a student not only of the law, but

also of humanity and history. He knew that there had always been on the earth men of good will but he knew too that these had always been outnumbered by the intolerant, the greedy, the vain and the ambitious. He knew that each nation was but the aggregate of its nationals and that nations composed largely of individuals who sought unfair advantages would be nations which sought unfair advantages. He knew that this kind of seeking leads inevitably to war.

We have come to accept most of the opinions of the "Great Dissenter." Perhaps we would do well in this instance to give thought to Justice Holmes' dissent from a majority opinion which seems to hold that permanent peace can be gained merely by means of a skillfully drawn Peace Plan and without a radical change in the fundamental and age-old attitudes of the peoples of this world. The dissenting opinion does not hold that such a Plan should not be drawn with all the care and skill and devotion to the cause of peace that may be possible; it merely holds, as we see it, that tolerance and good will must become universal to the end that such a Plan may become a living thing and not merely a record of high hopes that have failed—perhaps for all time.—IRVING M. WALKER.

A WORD FROM THE PRESIDENT

Some of the members of the bar who entered the service have been discharged and are re-establishing themselves in the practice of the law. As the war against Japan progresses, and particularly as it nears a conclusion, more and more of these young lawyers will be returning to civil life. The Los Angeles Bar Association has a committee which, in conjunction with a similar committee of the State Bar, is endeavoring and will endeavor whenever requested to help these young men with the problems they face in re-entering their profession. Some, if not most, of them have been serving their country for more than three years.

The task of both our committee and that of the State Bar is a difficult one and will no doubt prove to be more difficult as time goes on. The committees cannot do the job alone. They need the help of every lawyer and law firm in our com-

munity. I appeal to every member of our Association to do his best to aid these young lawyers whenever and wherever he can, and particularly to give sympathetic assistance to the programs developed and to be developed by the committees in charge of this work.

Alexander Macdonald

WOMEN'S JUNIOR COMMITTEE

Mrs. Rena Brewster, Chief of the Division of Industrial Welfare, State of California, was the speaker at the May dinner meeting of the Women's Junior Committee of the Los Angeles Bar. She spoke on the subject "Women Are People."

The meeting was held in the Redwood Room of the Savoy Hotel, on May 16, 1945.—A. M.

BY THE BOARD

Judge's Salaries: The Board adopted a resolution favoring an increase of \$2,000 per annum in salaries of superior court judges of Los Angeles County. It also favored an increase for municipal court judges.

* * *

Court Reporters: Committee on Costs Incident to Court Proceedings having reported favorably on S. B. 531 and A. B. 1009, providing for increased compensation for municipal court reporters, the Board voted to approve the committee's recommendation.

* * *

Board of Tax Appeals: A. B. 309 creating a Department of Revenue and Board of Tax Appeals, was referred to Committee on Administrative Law for study, which committee reported that a Board of Tax Appeals would perform a useful function, and recommended that the Trustees request the State Bar Board of Governors to refer it to the State Bar Committee on Administrative Law. The Trustees referred the matter back to the local Committee on Administrative Law with instructions to prepare a concrete plan, to

be submitted to the Board as soon as possible, for further consideration.

* * *

Cost Bills After Judgment: The Board approved a report of the Committee on Pleading and Practice as to A. B. 972 recommending that the Association make active opposition to the bill in its present form, and to present a draft of a bill amending C. C. P. Sec. 1031, adding Sec. 1032.9 and 1033a as revisions and amendments to A. B. 972 concerning cost bills after judgment. A copy of the Board's resolution, with the committee's report, was ordered sent to Chairman of Judiciary Committee of the Senate. Judge Call, of the Municipal Court, later asked the Board to reconsider the matter, and it was referred back to Committee on Pleading and Practice..

* * *

Courthouse: There was presented to the Board report of Committee on Law Library and Courts Building stating that Chief Engineer of Mechanical Department of the County had advised the Chairman of our Committee that a request has been made by the office of Public Administrator and Coroner to have his offices located on the same floor with the Probate Court in the new courthouse building. The report requests the Board of Trustees to "register its objections to the location of the coroner's office as has been requested with the Judges Committee on the new courthouse, the judges of the Probate Courts, the Probate Commissioners, the Board of Supervisors, and the Mechanical Department of the County." The Board, by a unanimous vote, adopted the Committee's recommendations and instructed the Secretary to comply therewith.

* * *

Branch Court Files: The Judiciary Committee recommended that in regard to the matter concerning records of branch courts of the Los Angeles Superior Court, it be suggested to the Superior Court Clerk that when an original record is removed from the main clerk's office for transfer to the branch clerk, the duplicate record be forthwith returned to the main office, and *vice versa*. The Board approved the Committee's recommendations.—E. D. M.

COMMENT AND CRITICISM

Texas: Texas Supreme Court ruled that pardon by governor does not require State Bar to restore a lawyer's membership in that organization because restoration to citizenship is a criminal proceeding, whereas disbarment of an attorney is civil.

* * *

Fees: Considering the adoption of a minimum fee schedule, the Philadelphia Bar Association was told by the former chancellor of the Association that fees charged today by lawyers are about the same as those charged thirty years ago, in spite of the increased cost of everything they must pay in overhead. The minimum fee schedule was adopted and the public is to be informed that such fees are minimum fees only.

* * *

Why Do It? "Lawyers will bend over backward to help some other business or profession but won't do anything for themselves." Thus spoke an officer of Cumberland (N. J.) Bar Association in deploring the failure of lawyers in the New Jersey legislature to press a bill providing penalties for unauthorized practice of law. We have noted some striking demonstrations of this attitude in our own legislature in the past.

* * *

Continuing the Battle: Once again the Bar of California is going forward with its ten-year battle to amend Secs. 422 and 423 of the Probate Code, so as to give non-resident heirs the right to nominate an administrator, provided such heirs are citizens of the United States and entitled to inherit. As this is written the matter is before the Senate Judiciary Committee. The bill has the active support of the State Bar and many local bar associations, particularly the Los Angeles Bar Association, which always has been in the front in the

fight. In all previous attempts the bill has been tabled by the Senate Judiciary Committee. That committee is composed of lawyers who are familiar with the problem. We hope that they will act favorably on the bill and thus end at least one phase of the fight.—E. D. M.

WARTIME RESTRICTIONS UPON TRANSFER OF VESSELS

THE BULLETIN received a letter from Joseph K. Horton, Lieut. Commander, USCGR, in which he called attention to certain restrictions upon the transfer of vessels in time of war. The body of the letter reads as follows:

"Recent instances indicate that the wartime restrictions upon the transfer of vessels contained in Section 37 of the Shipping Act of 1916 as amended (46 U.S.C. 835) may not be commonly known. This act prohibits, when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, the transfer of any interest, without first obtaining the approval of the Maritime Commission, in any vessel owned in whole or in part by a citizen or by a corporation organized under the laws of the United States or of any state, territory or district, or of possession of such vessel, to any person not a citizen of the United States. Like restrictions are imposed upon a mortgage, lease, or charter of such a vessel. Violation of the act constitutes a misdemeanor and punishment is a fine of not more than \$5000 or imprisonment for not more than five years, or both. The vessel is also subject to forfeiture. Any sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement contrary to the provisions of the act is declared to be void. The law applies to sales to friendly aliens as well as to sales to enemy aliens. A sale to a Canadian, British, or Mexican, as well as any other friendly alien, is, therefore, within the prohibition of the act. In this respect it is considered that a sale of a vessel by a citizen so that an alien spouse of a citizen purchaser would acquire a community property interest in the vessel is also prohibited by the act, without the prior approval of the Maritime Commission.

"It will be appreciated if the attention of the Bar can be called to this law. Many violations noted have been unintentional and would have been avoided if the provisions of the act were known and heeded."

LAW LIBRARY BUILDING FAVORED

THE County Law Library should be housed in a separate building to be constructed by the Board of Trustees of the Law Library.

That is the substance of a resolution adopted by the Los Angeles Bar Association Committee on Law Library and Courts Building, in a comprehensive report submitted to the Association's trustees. The resolution adds that the recommendation is subject to further consideration of the availability of a suitable site for the building and the existence of adequate financing.

Because the county law library is created by statute and is managed by a board of trustees, the committee believes it is within the province of that board to provide and maintain for the law library, not only the law books, but a building to house such books, library personnel, proper facilities for study and the use of the books by those desiring to do so. It believes the library trustees alone can determine whether the law library shall be housed in the new courthouse or in a separate building.

The trustees of the Association approved the Committee report to the extent of favoring a separate building for the law library, and ordered a copy of the report sent to each member of the Board of Trustees of the County Law Library. While any action by the association's trustees is advisory, the committee's report expresses the wish that the attorneys of the entire county indicate a preference between a separate library building and housing in the new courthouse, and believes that preference can best be arrived at and expressed by the bar associations of the county.

The committee's report states that the library fund presently is \$825,000, a sum it believes sufficient "when economically and judiciously applied to the creation of a structure such as is required in the instant case." In recent years, the report says, the income of the library fund has been about \$100,000 a year, with a net addition to the fund of about \$25,000 a year, with the expectation of a like addition yearly for the next several years, at least until the library moves into a building of its own, should that occur.

If the library acquires its own building, the report says, it will be necessary to pay the cost of maintenance of the building, public utility service, etc., in addition to the expenditures now required, but believes that the present excess of \$25,000 a year would be more than ample to cover the additional costs; that until a library building is constructed it can remain in its present quarters in the Hall of Records, during which time the fund would be augmented by about \$25,000 a year; that a library building would not be commenced until the war ends, and the cost of construction decreases, and material becomes readily available.

In discussing the new courthouse and the housing of the library therein, the Committee's report says:

"If it should be determined to house the law library in a new courthouse to be erected, the law library will not have been housed in new quarters for some considerable time to come; for in addition to the elements designated as matters of delay in the construction of a separate law library building, which would equally hinder and delay the building of the courthouse, there is the element of financing this latter building. This might cause a much greater delay in the commencement of that structure than is anticipated. No funds of the county are earmarked for the building of a courthouse, and no money is now available for that purpose. It is, therefore, logical to assume that the voting of a bond issue of many millions of dollars will be required for that building. The affirmative outcome of such an election could be gained only by astute, diligent planning and work, if it should ever become necessary for such action.

"In connection with the financing of a separate building for the library the committee considered the facts that the Law Library Trustees deem it advisable that at all times there should be retained in the Library Fund as a permanent reserve about \$100,000.00, and that it would require about \$125,000.00 for the purchase of new furniture and library equipment and for miscellaneous expenses incurred in the moving into the new quarters. The last item can be materially reduced by the continued use of a great deal of the furniture and equipment now in the library quarters."

With reference to the location of a law library building, the report leaves that phase open for further consideration. "It is thought, however, without deciding, that it should be located within the area of the Civic Center of Los Angeles, if possible, but not too far away from the southern portion of that area. This phase of the matter is reserved for further and more

extensive study if required. As to the ability of the library fund to finance an adequate and representative building, we believe the trustees of that fund should primarily make determination in respect thereto, although it is a matter we need not dismiss from further consideration."

Discussing the advantages of locating the library in a separate building, the committee considered the primary uses for which the law library was created and is maintained, and "it appears conclusively that a separate building for its housing is preferable." A courthouse and public office building such as will be constructed, the committee says, "will be constructed as a court and office building and in view of the requirements for the housing of the courts and public offices, with little if any consideration given or planning devised for the requirements of the law library, the latter being inherently different from the former. The library will thus be fitted into a structure in no wise built for it, with the result that the library will be inadequately and improperly housed.

The report continues:

"Furthermore, by containing the library in the courthouse, the site of the courthouse becomes the location of the library, irrespective of how inappropriate the location of the library may be. The attorneys as a body would never select the corner of Spring and Sunset as the point of location of the law library. In connection with the fact of the location of the new courthouse at this corner, it might parenthetically be stated that so far as we are advised, none of the bar associations and none of the lawyers for that matter were consulted concerning the location of the courthouse at this point.

"To take up and discuss the many and various elements and attributes commending a separate building for the law library would unnecessarily extend this report. We think it will suffice simply to epitomize some of these features, as follows:

"1. Those most experienced on the subject, advise that the natural light coming from the east and the north is the most advantageous and beneficial in relation to those using a reading room. The height of the windows as compared with the size of the reading room is important. The library housed in the courthouse will largely be denied these benefits. . . .

"2. A wide latitude may be indulged in choosing the location for a separate building, giving satisfactory consideration to the matters of light and view; size and shape of the main reading room and attached rooms, such as private reading rooms, the browsing and display room, lecture room, lounging or smoking room, dictation rooms, etc.; area for expansion; and a location with a view to the convenience of the attorneys using the facilities of the library.

"Even though the library should be somewhat removed

from the courthouse, the books required to be taken from the library to the courtrooms could be, if required, readily delivered by those employed for that purpose by the library board, either manually or by motor scooter. This would give satisfactory and expeditious courtroom service. The library is now located in a building in which there are but few courts and there seems to be no complaint. The time devoted to research and work in the library by attorneys in their practice and in their preparation for trial is exceedingly greater than the recourse to the books by the attorneys in the actual trial of lawsuits. To say that the library should be located in the courthouse so attorneys may hurriedly take books therefrom to the scene of the trial simply begs the question, and wholly ignores the most important purpose and function of a law library. Experience shows that but few books are ever taken into the courtrooms. Then since the library was conceived and exists for this larger use by attorneys and the general public, it should be so located and designed that in that use the maximum benefit, comfort, satisfaction, and pleasure may be had and attained by those so using it.

"3. The library would be freer of obligations to the county. No tax money would be required or expended for maintenance of the library quarters and no favors would have to be requested of busy county officials and employees to the end the quarters should be kept clean and in a suitable condition.

"4. The Board of Library Trustees would have complete control of facilities, which would mean that unwanted changes and encroachments could not be imposed on the library, that there would be no delays in filling service needs, and that required improvements could be made promptly. In regard to improvements, as examples of delays resulting from relying on the county, it is worth mentioning that it took over two years to secure only a part of the required changes in the lighting arrangements in the library; that we still lack a drinking fountain on the seventh floor although attention was called to the need in 1939; that the men's lavatory on the seventh floor is in a deplorable condition for lack of proper maintenance and needed changes of plumbing fixtures, also called to the attention of the county in 1939. Such delays, it appears, are due in part to the county's need to economize,

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and in part to the fact that a public agency necessarily moves slowly when geared to an annual budget. In any event, the Board of Law Library Trustees could most satisfactorily maintain a separate building at an outlay which is estimated at not exceeding \$8,500 a year, including adequate janitorial service, as we have said.

"5. There would be avoided certain legal problems regarding title to the quarters occupied by the library and authority to enter into necessary agreements concerning these quarters.

"6. A separate building would have income possibilities. The law permits the inclusion in the building of as many as four courtrooms, with necessary offices in connection therewith, which, for example, could be rented to the county for use by the courts having most need for the use of the library. The law also permits the renting of offices therein to a notary and to a public stenographer. Such additional and independent income would be helpful as a basis in planning a long term program of expenditure.

"7. The Board of Law Library Trustees would have greater freedom in developing plans for the building and in determining and controlling the quality of construction. As we have indicated, the county building will be designed almost wholly for purposes other than that of a law library, and the library would be forced, by the needs of a larger unit, to sacrifice many features not only of importance to the library generally but to the facility and comfort in the use thereof. To illustrate, from one of the plans installing the library in the new courthouse there exists:

"a. Many pillars in the reading room and balconies;

"b. Stairways partially blocking access to some of the book stacks;

"c. Insufficient space for dictation rooms and other required rooms off the main floor stacks;

"d. Workrooms too far from reference desk and catalogues;

"e. Librarian's office isolated from the patrons and from the reference desk;

"f. Long hallway to reference desk;

"g. Public toilets at the entrance to library;

"h. No expansion possibilities;

"i. Lack of north light for reading room;

"j. Balcony will be several steps further up and the lower floor several steps further down than main floor stack construction.

"Concluding, we think the following should be taken into consideration and placed among the items favorable to the construction of a separate law library building.

"On more than one occasion the legislature of the state has looked with 'jaundiced eye' and longing upon the control and use of the excess fund of the law library. On these occasions, we remember, the Los Angeles Bar Association has sent representatives to Sacramento to lobby against the bills, with the result no change was made. The very fact that the library and its government have been free from political interest and control has helped to make it the fine institution we have today. The plan of government results in the fact that we can and do acquire and retain on the Board of Trustees men of great ability and of high ideals, men who give to the gov-

ernment of the library their honest endeavor, free from political considerations. We cannot afford to have this changed.

"However, should the library be housed in the courthouse, then after the payment of the estimated \$600,000 for the quarters and whatever is necessary for the purchase of new furniture and equipment, the remainder of the fund immediately will begin increasing at the approximate rate of \$25,000.00 per year, which will increase the reserve fund to such proportion that it might again receive the notice and attention of the politicians to the detriment of the law library and its government. It would seem to be safer to build a separate building using the present fund up to the point of safety, after which the reserve fund will not be increased nearly so rapidly, and thus there will be avoided the danger of a political engulfment pointed out.

"By such action this danger will be avoided and at the same time a much desired building will be acquired."

The committee report is signed by Edward D. Lyman, Frank B. Belcher, Norman A. Bailie, Thomas S. Dabagh, Reuben G. Hunt, and Joseph Smith, chairman. J. Ray Files, the other member of the committee, was absent.—E. D. M.

REPLIES TO THE EDITORIAL "POWER TO DESTROY"

GEORGE BRESLIN's editorial "Power to Destroy" in the May number of the BULLETIN has aroused considerable comment. The author received several letters from persons who approve his stand. The BULLETIN invited readers who disagreed with the views expressed in the editorial to submit replies for publication. Three such replies follow.

From Maurice Saeta:

Since Mr. Breslin's appeal is addressed to the Bar, we should answer as lawyers, calmly and dispassionately; avoiding catchwords and red herrings such as C.I.O., Communism and Socialism; and refuse to permit vehement and dogmatic assertions to take the place of proof.

It would seem to me that Mr. Breslin has mistaken the nature of taxes. I think we can start with the assumption that no one likes to pay taxes; but that is a far cry from assuming that taxes are synonymous with the "power to destroy." That is only one side of the picture; the other side was presented by the late Justice Oliver Wendell Holmes when he said: "Taxes are a privilege, not a burden." Taxation is a means and not an end in itself. It cannot be treated in a vacuum. It all depends upon your objective—what kind of a world you want to

live in. Taxation is a flexible instrument which can be used to promote full employment and thereby insure prosperity or it can stifle prosperity. Just a few days ago a Congressional Committee recommended the partial elimination of excess profit taxes as a means of stimulating business. "Incentive" taxation has taken hold upon the imagination of our business leaders and is becoming a part of our every day vocabulary.

Now if you are going to freeze the tax rate in the Constitution by placing a limit on federal income, gift and inheritance taxes, what are you going to do about federal expenditures? Unless you freeze that, your income will not balance the out-go. To permit Congress to spend without limit, and then tie its hands on the wherewithal to pay for those expenditures would inevitably lead to inflation! It would be like straight-jacketing a man, throwing him into the water and then telling him to swim. It just can't be done!

Would you freeze expenditures? That is easier said than done; but even if that were possible, the future has already been partially mortgaged. Obligations have already been incurred that must be met; for example, the payment of principle and interest on War Bonds and our obligations to returning veterans as envisaged in the G.I. Bill. Eminent economists

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warn us of the perils of reconversion and postwar unemployment. Suppose it becomes necessary to initiate public works projects to solve that problem—that will require the expenditure of vast sums of money. Where is the money to come from? From borrowing? There is a limit to that; the day of reckoning comes and you have to pay with taxes.

You put your freeze figure at 25 percent. Why 25 percent? How was that figure arrived at? Was it done arbitrarily or scientifically? Will it be sufficient? That depends upon many incalculable elements; the services you expect from your Government and the unforeseeable tasks that will have to be assumed by us in a war-torn and weary world. With a limited income and an unlimited out-go the difference will have to be met with other kinds of taxes. Will they be equitable taxes, based upon ability to pay or will they be the kind that shifts the burden to the backs of those least able to pay such as sales and excise taxes.

You have no faith in Congress; well, remember that Congress is a cross-section of the American People, possessing all of its virtues and frailties; and if it yields sometimes to the temptation to spend—so do we all!

You say: "the proposed amendment would be effective only in peace time"; but it is in peace time that we prepare for war. This is considered wise statesmanship and good sense, and that means spending on a grand scale. Where is the money to come from

Asking these questions gives us a glimpse into the enormity and complexity of the problems that will face us and have to be solved; not by wishful thinking or living in a dream-world, but by hard and painful thinking, bold experimentation and an earnest desire to meet novel situations realistically in a changing and dynamic world.

From Allan M. Carson:

In the BAR BULLETIN of May, 1945, Mr. George M. Breslin advances an argument for strict limitation upon federal taxation in time of peace. ("The gentlemen cry 'Peace, peace!' when there is no peace.") Reduction in taxation is a consummation devoutly to be wished. Would there were no taxation at all! From the viewpoint of the ideal, I do not favor taxation. From the same viewpoint, I do not favor government. At best it is a necessary evil. It has been said (was it Thomas Jefferson?): "That form of government is best which governs least." If I may presume to do so, I think it better said that that form of society is best which requires the least amount of government to keep it in order.

It appears to me that the most effective answer to Mr. Breslin's remarks are to be found in "A Word From the Presi-

dent" of the Bar Association, in the same issue, and immediately following the article by Mr. Breslin, wherein it is stated:

"It costs money to run any enterprise; and the Los Angeles Bar Association is no exception. While our present financial condition is sufficient, for the moment at least, to enable us to 'get by', it is by no means what it should be. As a matter of ordinary business prudence we should increase our funds to a point where we can easily meet all financial demands and still hold a comfortable sum in reserve. This can easily be brought to pass if every member, who can, will take out a sustaining membership."

If the words "Federal Government" are substituted in that quotation for "Los Angeles Bar Association," perhaps the analogy becomes clear. If it takes money to run the Bar Association, can it be said with any degree of truth that it does not take money to run the Federal Government?

But perhaps both organizations are non-essentials in our daily life. If we would save money, then let us get rid of such non-essentials as Federal Governments and Bar Associations. However, if such organizations are necessary to our well being, and it costs money to run them, somebody has to pay for the upkeep. And he who has the ability to pay must pay the bill, lest he pay the piper for the results if the bill goes unpaid.

The most we can hope for, is the elimination of unnecessary governmental expenditures; but once such expenditures are pared away to what is an absolutely necessary minimum, we are going to have to pay for that necessary minimum of government, whatever the cost, or take the consequences. If it can be successfully demonstrated that the cost of necessary federal government can never require taxation beyond a rate of twenty-five per cent on incomes, inheritances and gifts, then the argument for a constitutional limitation to that extent is well taken. Is there anyone who will undertake the demonstration? It's popular to be from Missouri these days.

The point here to be emphasized is that we will have to pay for such government as we need—or else!

From Oscar Moss:

Mr. Breslin's editorial entitled "Power to Destroy" is certainly challenging. The immediate reaction to the article, which doubtless the author wishes to create, is that unless the constitutional amendment limiting taxation to a maximum of 25% is enacted, free enterprise system is on the way to destruction, if not already there, and in place we shall have state socialism, communism, or some other form of economic dictatorship. This, I submit, is an unfair statement of alternatives because a great majority of us, including the writer, believes in free enterprise and yet holds that the contemplated constitutional amendment is not only contrary to common sense but also inimical to the

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very existence of free enterprise which it intends to preserve.

Some years ago, Professor Morgan, of Harvard, in an address in our city, made the statement that lawyers, when they are unable to explain logically a rule of law, usually fall back on the much abused phrase that the particular rule grows out of or is based on a "fundamental legal concept" as if it were one word like "son-of-a-gun" (or a similar sounding phrase). The use of Chief Justice Marshall's well-known dictum "the power to tax involves the power to destroy" is along the same line because for want of a more logical anchor for the argument, the author falls back on a cliché which fails to answer the problem. In the same mood, one recalls the equally famous dictum of Justice Holmes that the power to tax is not the power to destroy "while this Court sits."

Let us examine this proposed constitutional amendment as discussed by Mr. Breslin (the writer has not the actual text of the proposed amendment before him) and what it would do for free enterprise. The first objection which comes to mind is that while income, gift and estate taxes would be limited to a 25% maximum rate, there is no provision for limiting the power of the Congress to spend money. This would suggest that Mr. Breslin and other advocates of the provision believe in deficit spending as a settled governmental policy. Without going into the merits of the question whether limited deficit spending is desirable or not even under special circumstances, I do not believe the proponents of the measure intend to sponsor such economic philosophy.

That the proposed constitutional amendment would not apply in time of war is obviously inadequate in the light of our experience in the present war, since preparation for war and a maintenance of a large military establishment to prevent war will have to be a national policy for generations to come. I shall not discuss here other post-war spending to support social and economic rehabilitation which, whether we like it or not, may require expenditures beyond those ever dreamt of in the '20's.

In the absence of limitation upon the rate of sales tax, I take it that the proponents of the constitutional amendment would expect that a substantial portion of revenue could be raised from such source, apparently without limit. This would place advocates of the amendment alongside the "ham and eggheads" who also believed in the raising of revenue through high sales tax. If some semblance of balanced budget is attempted, it is almost inevitable that a substantial portion of the revenue would have to be raised through sales tax and it is generally agreed among foremost economists of every shade of opinion that sales tax shifts the burden from those with large incomes to those with

small fixed incomes, derived from salaries, wages, and annuities. It is self-evident that a person with an annual income of, say, \$1,500 will spend practically all of it for living expenses while another person with, say, \$50,000 or \$100,000 will spend a smaller proportion of his total income on taxable items. Thus, the latter, who can better afford to pay taxes, will actually contribute in the form of taxes a smaller percentage of his total income than one with the smaller income.

It may be said that the increase of sales tax is not necessarily contemplated, therefore this type of argument sets up a straw man. It is fairly clear however that since there is no limitation on the power of the Congress to spend and that post-war needs of the government will considerably exceed the amount of revenue which the government could obtain through a maximum tax rate of 25%, the deficit would have to be raised either through taxes not prohibited or through loans. Here the proponents of the amendment are again in a curiously contradictory position because they want to save "free enterprise" by limiting the taxation to an amount which is bound to fall far short of the current expenditures of the government, and at the same time, make it necessary for the Congress to increase the national debt or, in other words, continue deficit spending, a policy of public finance



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held to be by many destructive of free enterprise. The argument that the Congress would or should balance the budget by limiting expenditures to revenues received under the constitutional amendment is unrealistic, both economically and politically. The basis for the amendment, as quoted by Mr. Breslin, is that "Congress has disregarded these fundamental principles and there can be no assurance that it will refrain from doing so in the future unless it is restrained by the Constitution." Does anyone honestly believe that Congress will refrain from spending money but will not refrain from taxing? Is it not more in line with actual political reality to say that most congressmen are more likely to tax their constituents as little as possible but get as large a government appropriation for them as possible?

I am afraid that Mr. Breslin and other proponents of the amendment are living in a fool's paradise if they believe they can save free enterprise by limiting the constitutional power of the Congress to tax. On the contrary, the passage of such an amendment would ultimately be destructive to free economy even though temporarily it would seem to preserve property rights. Yes, taxes can and should be considerably lower during peace time, but let us not cure the disease by killing the patient.

A SACRED, SOLEMN TASK

By Frank G. Tyrrell
Judge of the Municipal Court

THE Hebrew sage reminds us that there is a time for everything. Ordinarily, life moves on without solemnity; it requires mainly sagacity and good will. But the paroxysmal present presents mankind with a task which in its proportions and intricacies is awesome,—to set up a world organization which shall forever end international anarchy and the war system. Able men from more than forty nations have been assembled in San Francisco, consecrated to this sublime enterprise.

Much of what has been and is being said and written about their efforts is flippant, captious, and censorious, and betrays a character and an attitude unworthy of any intelligent person. This has been true of even some religious journals. A different temper was exhibited by the last convention of the American Bar Association, when the matter came before it in the report

and recommendations of the Section of International and Comparative Law. This Committee presented a series of six resolutions with respect to constitutional principles of a post-war organization of the nations for peace and law.

Mr. Floyd E. Thompson of Illinois, speaking for the Board of Governors, in the course of his apt remarks said:

"Superlatives are always dangerous, and usually involve exaggeration. But I think I may say with considerable confidence that there is no question that has been before the lawyers of America, since we have had an organized bar, and probably will never be a question of greater import than that which is now before us. The lawyers of this country have an obligation to meet this situation, and we must discharge that obligation with the solemnity which the importance of the subject carries."

The statesmanlike solution of the problem ought to be and is possible. The efforts put forth in that epoch-making conference may not all be scientific and disinterested; but they are entitled to decent respect, and those who feel that they have the ability to criticise should make their criticisms constructive, and observe the amenities of discussion among gentlemen.

For the lives of uncounted millions of the youth of the next and all succeeding generations, to the end of time, are here involved; also the peace, welfare and happiness of the world of toiling, aspiring, hopeful men, women and children, together with all their works, the cities they have built, the humming factories in which they toil, the churches and cathedrals in which they worship, their halls of learning, their art galleries and theatres, and above all the myriad homes in which children are born and nurtured. For modern machanized warfare is total, and from its demonic devastation there is no escape for the living, and no work they have wrought is exempt.

And the task in its very nature is a challenge to the legal profession. There can be no peace without justice, and if we may dare to consider justice a commodity, we may say that lawyers and judges are the almoners and merchants of justice. The constitutions and laws that are written must reflect, as near as possible, equal justice, and they must have such enforcement as will secure justice.

Individually and collectively, the profession must throw itself with utter abandon into the task. To make their work effective,

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they must know the facts of history, the institutions of this present type of civilization, its objectives, its trends, and the controlling and directing principles of human progress. A boundless field of study is open before us, a field into which comparatively few heretofore have ventured, but which we cannot neglect without self-stultification, and the repudiation of a fundamental moral obligation.

If the United States of America has indeed written constitutions and enacted laws which mark definite progress in civilization, then it is its sacred duty to lead or at least march with the van in this momentous undertaking. "Noblesse oblige!"—rank imposes obligation. It is not enough to erect the Bartholdi statue of "Liberty Enlightening the World"; we must organize our foreign policy and adjust our foreign relations so as to make that emblem a fact. And the lawyers of America are the men best qualified and most competent for the work.

The great assembly at San Francisco will have completed its toils and given out its findings and proposals before these lines are printed; what now? Well, our own Federal Constitution was written and signed, published and declared, with the understanding that certain amendments would at once be incorporated; and they were. No human work is perfect. The Charter of World Government, whatever it is, will of course need amendments. There is no indication with us Americans that we have yet reached a point where we have no more amendments to propose to our Constitution. What is given must be made operative, "with malice toward none, with charity for all," and we must press on to higher and finer achievement.

There are no values among all the priceless values of civilization which are not jeopardized by international anarchy. Adaptation to the social environment—to other nations, other races, imperatively conditions the survival of each and every nation and race on earth. The white race is a minority. For our own national survival, as for the survival of this tolerable civilization, it may well be "Now or Never!"



BUY BONDS



THE UNITED STATES AND THE BRETTON WOODS AGREEMENTS*

By Cecil L. Dunn, Ph.D.

Chairman, Department of Economics and Sociology
Occidental College, Los Angeles

THE fundamental reason why the United States should participate in the operation of the international bank and monetary stabilization fund proposed at the Bretton Woods Conference lies in the fact that such facilities are necessary to the restoration of world trade. The need for trade admits no argument. World trade is the most durable of bonds between peoples; it is the source of the many raw materials upon which a complex industrial economy depends; it offers markets and opportunities for enterprise; and it is the only channel through which a creditor nation can reap the advantages of its position.

The necessary conditions of a healthy world trade are: (a) freedom from artificial restraints such as tariffs, quotas, and trading *blocs*; (b) an effective monetary exchange mechanism; (c) means whereby capital funds may move freely from those nations enjoying surpluses to those which can use them in improving the structure of their economies and in developing their unused resources. The first of these necessities is beyond the scope of the present discussion. It involves, in the United States, the whole question of our tariff policy, and, especially at the present time, the question of the extension and liberalization of the Reciprocal Trade Agreements Act of 1934. Although economists often disagree on matters of policy, and occasionally on economic principles, there is almost complete agreement among them on this question. A reduction of the tariff barriers which now surround this nation would be highly desirable.

Provision of the means through which the second and third of the conditions mentioned may be met is the purpose of the

*This article contains the substance of an address delivered by Dr. Dunn at a meeting of the Association held on April 26, 1945. At the same meeting, an address was delivered on the same subject by Dr. V. Orval Watts, Economic Counsel of Los Angeles Chamber of Commerce. Dr. Dunn favors the agreements; Dr. Watts does not favor them. An article by Dr. Watts also is published in this number of the Bulletin.

agreements reached at the Bretton Woods Conference of the representatives of the United Nations. The two phases of the plan developed there call for the creation of related agencies; one, the Stabilization Fund, a reservoir of the world's currencies, available on a purchase basis to all who might need them for legitimate international trade transactions; second, the International Bank for Reconstruction and Development, mobilizing capital funds through direct credits and through guarantees of private loans when such capital might be needed either to correct a basic imbalance of trade through the rationalization of a nation's economic structure or to raise the level of its productivity by the development of new industries. The need for agencies such as these is obvious in a world which has undergone the effects of a prolonged depression and the destructive violence of a global war.

The first World War did not begin to approach the destruction wrought by the present conflict. The losses of men, money,

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and resources were only a small part of those experienced since 1939, but yet the world's economy never truly recovered from the effect of that blow, and the world depression itself was in part a result of the struggle. The pre-war monetary mechanism, the so-called "international gold standard," was one of the organs which showed the most severe damage, and in spite of a number of ill-starred efforts to restore it to health it never really regained its usefulness and it was to all practical purposes removed from the body of the world's economy by the major operations which Great Britain and the United States performed upon their currency systems in 1931 and 1934. The far more severe effects of the present war leave no reason to believe that a type of monetary mechanism which would not survive then can be restored to vigor now. The war alone is a sufficient reason for dismissing the gold standard as an impractical method for relating the world's currencies to each other, even though it may continue to serve usefully as a base for defining domestic monetary units.

The basic reason for the post-war failure of the international gold standard is to be found in its effect upon domestic price levels, requiring them to fluctuate in response to the movements of gold which redressed international balances. The mechanism by which these changes were produced worked, substantially, as follows: Heavy buying by one nation in another (meaning by "nation," of course, its traders rather than its government through intergovernmental transactions were often important components of international capital movements) would produce a shortage of the currency of the selling country and a rise in its price. As soon as the price of the needed currency had risen to the point at which it was cheaper to buy, insure and ship gold (the "gold point"), gold would begin to move from the buying nation to the selling nation. This movement of gold would diminish bank reserves in the buying nation, resulting in a restriction of credit, contraction of the total supply of money, and thus an increase in its value, *i.e.*, a fall in prices. The selling country, on the other hand, would experience an increase in its gold supply and hence its bank reserves. These, increasing during the period of brisk business resulting from the heavy foreign sales, would stimulate the expansion of bank credit, producing a relative abundance of money and a rising price

level. The relative changes in the price levels of the two nations normally tending to bring the wave of buying which had begun the cycle to an end. Thus the international gold standard provided exchange rates which remained stable within the "gold points," but at the cost of fluctuating domestic price levels. In view of the present importance of the latter it cannot be said that the achievement would now be worth the price.

The international gold standard could be restored to use if the nations party to it were willing or able to subject their economies to the vicissitudes of a fluctuating price level, but even though there might be governments willing to make the experiment (a proposition which is highly doubtful at the present time) it would be impossible for any government to carry the project to a successful conclusion for the very simple reason that many elements of comparatively recent growth in the modern economy offer effective resistance to price changes. The flexibility which once permitted the international gold standard to operate is no longer to be found. Some of the "sticky elements" which now inhibit price changes are: (a) the increased division of labor and mechanization, accompanied by larger units of production and relatively static charges, (b) increased proportion of activity in the service industries whose costs do not react rapidly to changes in wholesale prices, (c) increased use of credit, the costs of which are "sheltered" in the process of production, (d) increased cartelization, the cartel being essentially a device for minimizing risks through administered prices and other market controls.¹

The lessons to be learned from the monetary chaos of the inter-war years are by no means limited to the inadequacy of the international gold standard as a device to deal with present day conditions. These years saw the greatest development of the other systems which must be considered as alternatives, both to the gold standard and to the Bretton Woods Monetary Fund proposal. All of them were, essentially, based upon inconvertible paper currencies, and revealed clearly how such fiat monies can be manipulated as instruments of national policy which often, in fact generally, had other than economic ends. No attempt will be made to discuss all of these methods here,

¹cf. Strakosch, Sir Henry in Gayer, A. D. (editor) *Lessons of Monetary Experience*. The entire volume is invaluable to students of monetary policy.

as the weaknesses of one are the weaknesses of all. Barter schemes, exchange controls and clearing arrangements, and "blocked currencies," brought the volume and generally the character of international trade directly under the control of the governments affected and limited enterprise to those ends which served the national purpose. The success with which Germany used these various devices as instruments of economic aggression, fastening her hold upon central and southeastern Europe and undermining the collective security system built by France and the western powers is of too recent memory to require recapitulation. The recollection of it is sufficient proof of the fact that such opportunities should not again be created by a failure to build a neutral monetary system, offering at once a stable set of exchange rates and at the same time the opportunity to avoid wild fluctuations in domestic prices.

The International Monetary Fund proposed at Bretton Woods provides a mechanism through which the dual stability of prices and exchange rates may be attained. It does not propose to supplant the ordinary channels of international exchange, it does not become the exclusive agent for all such transactions. It stands as a reservoir of the world's currencies, from which a nation experiencing a need for the currency of another (nation again being defined in the sense used above) may purchase its requirement with its own currency, with gold, or with U. S. dollars. The constant availability of all currencies at fixed prices prevents fluctuation in exchange rates, whereas the fact that currency, unlike gold, does not inevitably result in the expansion of bank reserves and thus of credit, permits settlements which will not disrupt the stability of domestic prices. The Fund, as proposed, is surrounded by safeguards with which its management can readily prevent its misuse by any nation which might be disposed to make the attempt. It is a completely practical mechanism, but it must be admitted that in the long run its success would depend upon active world trade, for the Fund, like every other monetary system, could not long withstand one-sided or unbalanced demands upon its resources. Though each of the nations would not have to buy and sell to every other one in constant proportion to make the plan work, a general equilibrium would have to be attained among all. It is for this reason that the second element of the plan, the International

Bank for Reconstruction and Development, becomes important. It is its function to facilitate the mobilization and movement of the capital funds which will be necessary to permit each nation that rational industrial development upon which its participation in restored world trade may be based.

Like the Fund, the Bank does not propose to become the sole agency in its field international capital movement. It serves instead as a guarantor of credits supplied by private investors, loaning its own capital only when no other sources are available. Linked to the Fund, its resources as either agent or investor, can be brought to bear when a nation shows signs of running substantially behind in its balance of trade, encouraging that industrial development which will permit the debtor country to offer more goods in the world's markets and thereby increase its income.

In view of the uncertainties which will surround the field of international investment in the years after the war an agency offering guarantees to investors in its approved projects should be of vast importance, especially to the people of the United States who will be, beyond doubt, the major source of the world's capital funds. The plans by which this function can be carried out are entirely practical, and consist, essentially, in extending through international cooperation financial services to international trade which have proven workable and desirable in domestic affairs.

Although criticism has been brought to bear upon certain details of the operation of both Fund and Bank, technical points are not the source of the major opposition to them. No human agencies are perfect, especially in first draft, and it must be admitted that experience will refine the practice and the structure of both organizations. No technical criticism, however, claims that either agency is unworkable, and few critics allege that they are unnecessary. Those who oppose the creation of these agencies do so, for the most part, on other grounds, taking their stand within the realm of politics, rather than that of economics. Their opposition is not directed toward the Bretton Woods proposals alone, but toward any extension of the function of government. They claim to see the "light that never was on land or sea" in a regime of *laissez-faire*. Their vision is one to challenge idealism, but it is far from the realities of the present day world. Here common sense dictates that government, as

the collective agency of the common will, is the logical device for securing many great ends. In a free society where no doubt remains but that government is the servant of the people there can be no valid objection to its employment for their welfare. To use all governments cooperatively in the restoration of trade not only enriches men and nations, it "sets their feet into the paths of peace."

THE BRETTON WOODS AGREEMENTS FOR A WORLD FUND AND BANK*

By V. Orval Watts

Economic Counsel of Los Angeles Chamber of Commerce

REMOVAL of barriers and restrictions, both on domestic and foreign trade, is the one requisite for revival of world commerce and foreign investment. International cooperation to this end is highly desirable.

It cannot too often be repeated, however, that, in accepting the Bretton Woods Agreements, no nation would make any commitment to eliminate or reduce any trade barrier.

On the contrary, the government of each member nation in the Fund pledges itself to impose upon its citizens whatever regulations may be necessary to control international capital movements and to prevent transactions at other than the politically-determined exchange rates.

Enforcement of these provisions would mean a great and permanent increase in exchange controls and restrictions, especially for the United States. In fact, it would mean that every international transaction would have to be cleared through governmental agencies, both foreign and domestic. This process, furthermore, would necessarily involve an enormous amount of espionage and redtape to block the numberless avenues of escape and evasion ("black markets").

In addition, the management of the Fund is instructed to set up machinery for rationing, or blocking, any currency which even *threatens* to become scarce; and, in such an event, every nation is authorized to establish similar machinery for rationing

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such scarce currency among its own nations. Past experience shows that currency shortages soon become chronic and widespread when political agencies fix exchange rates under managed currency conditions, as the Bretton Woods Agreements provide. This is because the political control is set up for the express purpose of preventing adjustment of exchange rates to fluctuations in demand and supply. Consequently rationing, allocation or blocking of currencies would be a universal condition. This means that commodities and services in international trade would likewise be rationed, or blocked. This rationing of exchanges and of goods would be a far greater obstacle to world trade than fluctuating rates of exchange would be.

The World Bank proposed by the Bretton Woods Agreements represents an attempt to provide "social security" for investors and investment bankers in the field of international finance. Eighty per cent of the Bank's funds would be available for guaranteeing repayment of loans made by private persons or government agencies to other private or public agencies. Through such guarantees, the risks and responsibilities for international lending would be shifted from private persons and private concerns to government officials using government funds.

In the same way, the International Monetary Fund would be a collectivistic agency for employing the funds of all the people in a futile attempt to provide "security" for American exporters. It would do this through enabling foreign governments or central banks to exchange their own paper currencies or non-interest-bearing notes, for American dollars provided by the United States Government. These American dollars, provided by the United States Government, could then be used to buy American exports or to buy American gold to be used in buying the exports of other nations.

Advocates of so-called "social security" for wage earners try to justify it on the ground that the average wage earner is too short-sighted and improvident to provide it for himself. Do American bankers and exporters wish to put themselves in a similar unflattering light by asking government to take over the risks and responsibilities of foreign exchange and foreign investment?

No matter how carefully it is organized and managed, a government-owned and government-controlled bank is obviously

not free enterprise, or private enterprise. It is only government enterprise. It is true that such a bank may promote certain private interests, through loans and guarantees of loans. But such government aid to private interests is not free enterprise and does not promote free enterprise. Instead, like any other form of special privilege or subsidy, government credit and guarantees of credit to private interests corrupt and demoralize private enterprise when they do not immediately replace and destroy it.

Private enterprise, and only private enterprise, can reestablish world trade on a sound and lasting basis. This includes private enterprise in finance, as well as in trade. Therefore, a constructive policy calls for the removal of government restrictions on private enterprise, such as discriminatory taxes, quotas, tariffs, and exchange controls. Another line of constructive policy consists in putting an end to government competition with private enterprise, including competition in borrowing and lending. A third constructive policy would consist in strict government economy so that government budgets might be balanced at a reduced level of taxation.

The Bretton Woods Agreements make no contributions to adoption of such policies. On the contrary, they would pledge the United States Government to impose additional and severe restrictions on all transactions in foreign exchange. Through subsidized credits and tax-free competition, private enterprise in international finance and trade would be further demoralized and destroyed.

Finally, through loans and guarantees of loans directly to governments and to governmental agencies, both the Fund and the Bank would provide ready instruments for supporting and promoting collectivistic policies throughout the world.

The Bretton Woods proposals, therefore, represent merely one more attempt to set up new government agencies and controls to deal with problems directly resulting from other government restrictions and burdens on private enterprise. When the peoples of the world lop off the collectivist agencies of government, with their anti-enterprise activities, private enterprise will stabilize exchanges, rebuild industry and restore trade.

At the present time, however, the leading nations of the world are obsessed by the idea that prosperity is to be promoted (a)

by increased issues of fiat money; (b) by taxing the thrifty and industrious for the thriftless and idle; and (c) by monopolistic policies of price-maintenance and wage-maintenance. Their governments are committed to continuance of such policies. As long as this is true, long-run currency stabilization and trade revival are impossible.

In fact, the Bretton Woods Agreements are a part of the machinery necessary to the further development of collectivism and restrictionism here and abroad. These Agreements would call for the expansion of fiat currency. They would tax the capital resources of the United States in order to support foreign governments in continuing spendthrift and restrictionist policies which have already caused so much human misery. They would extend policies of price-maintenance and restrictionism in the field of foreign exchange and foreign trade.

The difficulties of foreign nations are not due to lack of gold or dollars. They have five times as much gold and dollar balances as they had in 1919, although the needs of trade have not correspondingly increased. The United States' gold holdings are not out of line with the relative economic importance of this country as compared with the rest of the world. As a matter of fact, the United States is a net debtor on short term foreign account for nearly one-third of our total gold holdings, or \$6 billion—an amount equal to that which this nation is asked to put into the World Fund and Bank. In addition, through the R.F.C., the Import-Export Bank, lend-lease, and continued spending abroad for war purposes further great sums of American money are being put into the hands of other nations. Only a few weeks ago, France was given a new credit of nearly \$3 billion under lend-lease, an amount several times as large as her quotas and borrowing powers under the Bretton Woods Agreements.

In view of these facts, the World Fund and Bank are not necessary for making foreign loans. Instead, they are part of the scheme for a so-called "planned economy," or socialism, on a world-wide basis.*

*"It has been proved, as far as I am concerned, that people in the international banking business cannot run successfully foreign-exchange markets. It is up to the governments to do it. We propose to do this if and when the legislative bodies approve Bretton Woods."—Statement by Mr. Henry Morgenthau, Secretary, United States Treasury, as quoted by the *New York Times* of February 10, 1945.

The economic difficulties of all nations, including the United States, arise from a general unwillingness of peoples and governments to live within their incomes and to meet competition in free markets. There is a general desire to prosper by organizing to seize a larger share of a restricted output, instead of by competing in production. The fallacies of communism and of scarcity economics, or monopoly, dominate the thinking of governments and peoples. These are the cause of the "price rigidities" which are said to make a return to the gold standard impossible.

The essence of the gold standard is the obligation to pay debts in currency of the same gold value as that in which they were contracted. Most governments of the world today say they cannot undertake such an obligation in the field of international finance because of financial commitments to domestic citizens—commitments for social security, public works, and subsidies. These policies are exhausting private sources of capital and causing budget deficits which have to be met by expansion of deposit currency and paper money. Exhaustion of private capital and expansion of fiduciary money, in turn, cause rising prices, declining exports and depreciating exchanges.

Someday, in the not distant future, these foolish policies will bring their punishment. Then they will be seen as the reactionary measures they are and will be repented by those who now mistakenly regard them as "progressive," or "liberal." When that time comes it will be a comparatively simple matter to extend help to those who need it, because they will be ready to help themselves. Private capital in this country even now is ample for the task and would be eager for the opportunity, if foreign borrowers showed a willingness in any reasonably near future to live within their means.

In the meantime, the United States should conserve its resources and permit private enterprise to build a strong economy at home. It should not waste its substance subsidizing its own exports and supporting foreign collectivism. On the contrary, private citizens should resist to the utmost establishment of new government agencies, like the proposed World Fund and Bank, for further regimentation and collectivization of our own economy.

Free enterprise will provide what stability and prosperity free men deserve. Who wants more—or less?

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